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[APPELLATE CRIMINAL JURISDICTION]
Whitley, Ag. C. J.
September 24, 1936.

ONG AIK PHOW.....Appellant

v.

REX .....Respondent.

[SINGAPORE CRIMINAL APPEAL No. 154 of 1936.]

Rubber regulation—import of rubber—excess unauthorised by permit—mens rea—Rubber Regulation Ordinance, 1934, S.14.

Where rubber imported into this Colony is found to be in excess of the quantity authorised by the import permit issued under the Rubber Regulation Ordinance, 1934, the importer is liable to be convicted under section 14 (1) of the Ordinance. As the wording of the section indicates an absolute prohibition, it is unnecessary for the prosecution to prove *mens rea* in order to secure a conviction under the section.

MAGISTRATE'S CRIMINAL APPEAL.

The facts and arguments sufficiently appear from the judgment below.

Eber for the appellant.

E. N. Taylor, Deputy Public Prosecutor, for the Respondent.

WHITLEY, AG. C.J.—This appeal from a conviction by the Third Police Magistrate, Singapore, raised an important point under the Rubber Regulation Ordinance, 1934. The appellant is the manager of Chop Hoe Thong, a firm which deals in rubber and other commodities. On the 20th November 1935, the Chop received from the Rubber Control Office an import permit for a consignment of 45 bundles of rubber from Blinjoe in the Netherlands East Indies. This permit was required by the Chop in order to comply with section 14 (1) of the Ordinance which reads:—

> No rubber shall be imported into the Colony unless it is accompanied by a certificate of origin duly authenticated by the competent authority in the country of origin.

Section 14(3), the penalty section, reads: Any person who contravenes sub-section (1)—shall be guilty of an offence under this Ordinance.....

.....

The procedure which is followed at the Rubber Control Office is as follows. When a dealer imports rubber from the Netherlands East Indies he brings to the office an Import Declaration accompanied by a certificate of origin, duly authenticated by the Dutch authorities. The Import Declaration which is made out by the dealer must state the number of bundles or cases, the weight and value and the shipper's name. The Control Officer compares the Certificate of origin with the Import Declaration and checked and the dealer thereupon takes the Declaration and if the figures agree an Import Permit is issued allowing the dealer to land the rubber. The dealer takes two copies of the Import Permit and the Import Declaration to the Import and Export Office where the Import Declaration is chopped "Import permitted." The dealer then takes the two copies of the Import Permit to the place where he wishes to land the rubber where the rubber is weighed by the Preventive Branch of the Monopolies Department and the Revenue Officer signs the back of the permit to show that the rubber has been weighed and checked and the dealer thereupon takes the rubber. This procedure is part of the machinery provided to carry out international rubber restriction and is designed to ensure that no rubber is imported into the Colony from the Netherlands East Indies which has not been granted the official permit of the Dutch authorities.

This procedure was duly followed in the present case. The Certificate of Origin and the Import Declaration stated the figures to be 45 bundles weighing 4300 kilogrammes or 71.08 pikuls and the Import Permit was issued for that amount. When the 45 bundles were weighed on landing it was found that there was an excess of 11.89 pikuls which works out at 17% of the total covered by the permit. The appellant was accordingly charged under section 14 of the Ordinance with importing 11.89 pikuls of rubber which was not accompanied by a Certificate of Origin.

There was no dispute as to the amount of the excess and the main defence put forward was that the appellant had no knowledge of the excess which must have been due to hurried loading at the place of origin.

The learned Magistrate examined the bundles and was satisfied from what he saw that at some time or other a quantity of rubber had been added or that two bundles had been made into one. He held that there had been an attempt at smuggling and that it was inconceivable that the appellant's Chop, which was admittedly acting as agents for the consignor, was not privy to this attempt. In view of the value of the excess, namely, $340, he imposed a fine of $500.

In the Petition of Appeal a number of points were raised which were apparently not taken in the Court below.

The first ground of appeal was that the Magistrate was wrong in holding that the 11.89 pikuls of rubber was not accompanied by a Certificate of Origin. In my opinion he was clearly right in so holding.

The second ground was purely formal.

The third ground I shall deal with later.

I disposed of the 4th, 5th, 7th and 8th grounds at the hearing of the appeal. In my opinion there is no substance in any of them.

The sixth ground was that the learned Magistrate was wrong in assuming that the Certificate of Origin set out correctly the actual weight of the consignment. In my opinion he

was right in so assuming on the principle of "*omnia praesumuntur rite esse acta.*" Moreover, the document in question was produced by the appellant himself. In any event I cannot see how this ground assists the appellant's case. The section requires that all rubber imported shall be covered by a Certificate of Origin and it is clear that the appellant has produced no certificate to cover the excess in this case.

The one substantial ground of appeal was the ninth and Mr. Eber frankly admitted that this was the ground upon which he principally relied. That ground reads:—

"There was no evidence to show that Chop Hoe Thong could have been responsible for the surplus (if any). On the contrary they were agents for sale, on commission and had acted reasonably throughout and having taken all reasonable precaution had no reason to suspect that the rubber so imported was in excess of the quantity they believed to be consigned to them."

When the appeal first came on for hearing Mr. Eber explained that the point which he intended to make was that in order to prove an offence under section 14(1) it is necessary to prove *mens rea* against the accused and that there was no evidence in the present case from which a Court could infer any guilty knowledge on the part of the appellant. The learned Deputy Public Prosecutor thereupon applied for an adjournment on the ground that he had not been given proper notice that this point was to be taken. Both counsel agreed that as this is the first case in which this question has been raised under the Ordinance it was desirable that the point should be fully argued. Assizes and Courts of Appeal necessitated a long adjournment but eventually the point was argued at length and I have had an opportunity of considering all the authorities. As a result I have no hesitation in coming to the conclusion that it is not necessary for the prosecution to prove *mens rea* in order to secure a conviction under this section.

There is a presumption that *mens rea*, an evil intention, or a knowledge of the wrongfulness of the act, is an essential ingredient in every offence; but that presumption is liable to be displaced either by the words of the statute creating the offence or by the subject matter with which it deals, and both must be considered. (See *Nichols* v. *Hall* L.R. 8 C.P. 322). As Wright, J. observed in *Sherras* v. *De Rutzen*, (1895) 1 Q.B. at page 922, there must in general be guilty knowledge on the part of the defendant, or of some one whom he has put in his place to act for him, generally, or in the particular matter, in order to constitute an offence, but there are certain classes of cases which form an exception to that rule and one such class is that of acts which are not criminal in any real sense, but are acts which in the public interest are prohibited under a penalty. In *Strutt* v. *Clift*, (1911) 1 K.B. 1, Lord Alverstone C.J. states the Law as follows:—

"No doubt as a general rule the existence of a *mens rea* in the defendant is a necessary ingredient in a criminal offence, and a statute creating an offence cannot be regarded as making an exception to that rule unless it expressly or by necessary implication from its language declares its intention to do so."

In considering whether the Ordinance introduces an exception to the general rule the Court must accordingly look at the wording of the section and also the subject matter of the Ordinance. It is to be noted that the wording is prohibitive "No rubber shall be imported—unless it is accompanied....." The prohibitive words are the same as those used in section 6 of the Sale of Food and Drugs Act, 1875, which were considered in the case of *Parker* v. *Alder*, (1899) 1 Q.B. 20 where the facts were that the respondent, a milk salesman, contracted to supply pure milk to an association. The milk was to be delivered to the association at a railway terminus in London. The respondent delivered the milk in a pure and unadulterated condition to the servants of the railway company at his local station, and the milk was adulterated without his knowledge or consent during the transit from the local station to the terminus. It was held that the respondent was liable to be convicted under that section which reads:—

"No person shall sell to the prejudice of the purchaser any article of food, or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser, under a penalty not exceeding twenty pounds."

In the course of his judgment Lord Russell of Killowen C.J. summed up the position in the following words:—

"Now, assuming that the respondent was entirely innocent morally, and had no means of protecting himself from the adulteration of this milk in the course of transit, has he committed an offence against the Acts? I think that he has. When the scope and object of these Acts are considered, it will appear that if he were to be relieved from responsibility a wide door would be opened for evading the beneficial provisions of this legislation. It has been decided in *Brown* v. *Foot*, 66 L.T. (N.S.) 649 in the clearest manner that an innocent vendor of milk is undoubtedly liable for the unauthorized act of his servant in adulterating it. It becomes, therefore, at once apparent that there is really no material difference between this case and that, because a vendor is no more able to prevent the adulteration by a dishonest servant than he is to prevent adulteration by strangers such as the servants of the railway company. This is one of the class of cases in which the Legislature has, in effect, determined that *mens rea* is not necessary to constitute the offence."

As Wills J. observed at page 26 the legislation on the subject was intended to be drastic, and the offence was created quite independently of the moral character of the act. In my opinion those words are entirely apposite to the present case. The legislation introduced to carry into effect the international agreement to restrict the production of rubber was necessarily drastic inasmuch as the temptation to circumvent the regulations by unauthorised production and smuggling are so great and it is of vital importance that the regulations should be as strict as possible and offer the minimum opportunity for evasion and deception. It is also clear I think that the offence created by section 14 was created quite independently of the moral character of the act. Another case in which it was held that the words of the statute amounted to an absolute prohibition was that of *Cundy* v. *Le Cocq* 13 Q.B.D. 207 which turned upon section 13 of the Licensing Act 1872 which makes it an offence for any licensed person to sell any intoxicating liquor to any drunken person. A publican sold intoxicating liquor to a drunken person who had given no indication of intoxication, and without being aware that the person so served was drunk and it was held that the prohibition was absolute, and that knowledge of the condition of the person served with liquor was not necessary to constitute the offence. The judgment of Stephens J. is short and it so admirably sums up what must now be regarded as the law on this point that I propose to set it out *verbatim*:—

"Our answer to the question put to us turns upon this, whether the words of the section under which the conviction took place, taken in connection with the general scheme of the act, should be read as constituting an offence only where the licensed person knows or has means of knowing that the person served with intoxicating liquor is drunk or whether the offence is complete where no such knowledge is shewn. I am of opinion that the words of the section amount to an absolute prohibition of the sale of liquor to a drunken person, and that the existence of a bonâ fide mistake as to the condition of the person served is not an answer to the charge, but is a matter only for mitigation of the penalties that may be imposed. I am led to that conclusion both by the general scope of the Act, which is for the repression of drunkenness, and from a comparison of the various sections under the head 'offence against public order.' Some of these contain the word 'knowingly,' as for instance s. 14, which deals with keeping a disorderly house, and s. 16, which deals with the penalty for harbouring a constable. Knowledge in these and other cases is an element in the offence; but the clause we are considering says nothing about the knowledge of the state of the person served. I believe the reason for making this prohibition absolute was that there must be a great temptation to a publican to sell liquor without regard to the sobriety of the customer, and it was thought right to put upon the publican the responsibility of determining whether his customer is sober. Against this view we have had quoted the maxim that in every criminal offence there must be a guilty mind; but I do not think the maxim has so wide an application as it is sometimes considered to have. In old time, and as applicable to the common law or to earlier statutes, the maxim may have been of general application; but a difference has arisen owing to the greater precision of modern statutes. It is impossible now, to apply the maxim generally to all statutes. and the substance of all the reported cases is that it is necessary to look at the object of each Act that is under consideration to see whether and how far knowledge is of the essence of the offence created. Here as I have already pointed out, the object of this part of the Act is to prevent the sale of intoxicating liquor to drunken persons, and it is perfectly natural to carry that out by throwing on the publican the responsibility of determining whether the person supplied comes within that category."

In my opinion these two cases (*Cundy* v. *Le Cocq* and *Parker* v. *Alder* which was followed and emphatically approved by the Court of Appeal in *Andrews* v. *Luckin* 117 L.T.R. 726) conclude the present case but it is I think desirable that I should deal with a few other points which were raised in the course of the arguments. Mr. Eber suggested that even though it may not be necessary for the Crown to prove *mens rea* yet it is open to his client as a defence to show affirmatively that he acted innocently. I am unable to agree with that view. Once again it is necessary to look at the wording of the section. There are no such words in it such as those to be found in section 2 subsection 2 of the Merchandise Marks Act 1887 which provides that "Every person who sells.....any goods to which any forged trade mark is applied shall be guilty of an offence against the Act unless he proves (a) that .....he had no reason to suspect the genuineness of the trade mark of.....(c) that otherwise he had acted innocently. If the Legislature had intended that such a defence should be available to an accused person under section 14 it would have said so by adding some such words as those used in the Merchandise Marks Act. That Statute was considered in *Christie Manson* v. *Cooper* (1900) 2 Q.B. 522. In that case it was held that whereas in the great majority of criminal cases it is necessary for the prosecution to prove a *mens rea* that was not necessary in prosecutions under that Act; but that on the other hand offences under that section did not come within the class of cases where, it being the object of the Legislature to forbid a particular act from being done at all, the statute is so framed as to forbid the commission of the act absolutely, quite

independently of any question of *mens rea*, and where consequently, however innocently the forbidden act is done, the person doing it must be convicted, although he had no *mens rea* at all. A prosecution under that Act, Channell J. observed, did not fall under either of those categories. To constitute the offence there must be *mens rea* in fact; but the burden of proof was shifted. The prosecution had not got to prove a *mens rea*; but if the Defendant was able to prove an absence of *mens rea*, then he was to be acquitted. Mr. Eber sought to bring the present case within this last category but section 14 of the Rubber Regulation Ordinance contains no such provision as that in the Merchandise Marks Act which expressly makes such a defence available and I feel no doubt that charges under section 14 must fall within the category of cases in which the person doing the forbidden act must be convicted although he has no *mens rea* at all.

At the end of the hearing of the Appeal Mr. Eber raised a new point. He drew attention to Rule 31 of the Rubber Regulation Rules which reads:—

> Where a permit to import has been issued but the rubber imported is in excess of the quantity authorised by the permit, if the owner of such rubber satisfies the Controller that having taken all reasonable precautions he had no reason to suspect that the rubber so imported was in excess of the quantity authorised by one import permit and that otherwise he had acted innocently, the Controller shall seize the rubber in excess and may deal with it in the manner provided by section 29 of the Ordinance.

The argument which he founded on this rule was that in effect it gives the Controller power to enquire into the question of guilty knowledge and that reading that rule with the Ordinance the Court should infer that it was the intention of the legislature that *mens rea* should be an essential ingredient to constitute an offence under section 14. In support of his contention that the Court is entitled to look at the Rules in order to assist in interpreting the Ordinance he relied upon the following passage in the judgment of Lord Justice Mellish in *Re Wier* (1871) 6 Ch. Appeals, 875:—

"We do not think that any other section of the Act throws any material light upon the proper construction of this section, and if the question had depended upon the Act alone we should have had great doubt what the proper construction was; but we are of opinion that, where the construction of the Act is ambiguous and doubtful on any point, recourse may be had to the rules which have been made by the Lord Chancellor under the authority of the Act, if we find that in the rules any particular construction has been put on the Act, that it is our duty to adopt and follow that construction." But it is to be observed that it is only where the construction of an Act is ambiguous or doubtful that such recourse may be had to the Rules and in section 14 I can find nothing ambiguous or doubtful, the prohibition in that section being perfectly clear and definite. In my opinion Rule 31 cannot be regarded as in any way limiting or qualifying section 14. All that it does is to provide the Controller with simple and speedy machinery for confiscating any excess rubber and taking no further proceedings against the offender in any case where the Controller is satisfied that such excess is due to accident or mistake and not the result of any deliberate act.

My observations of this last point also cover the arguments put forward under the third ground of appeal.

To sum up, it appears to me that the combined effect of section 14 and rule 31 is that, where rubber imported is found to be in excess of the quantity authorised by the permit and the Controller is satisfied as to the bonâ fides of the owner, the Controller must seize the excess rubber and has power to forfeit it as provided by section 29(2). The rule says that the Controller "may deal with it" not "shall deal with it" so that he is clearly given a discretion. If in the exercise of that discretion he decides to forfeit it the matter would presumably rest there and there would be no prosecution, the only penalty suffered by the owner being the loss of the rubber. In passing I would observe that the fact that the Rule provides for the infliction of such a penalty upon an innocent owner tends to show that the intention of the Ordinance is that *mens rea* should not be a necessary ingredient to constitute an offence under section 14. If the Controller decides not to forfeit the excess himself under section 29(2) or if he is not satisfied as to the bonâ fides of the owner his next step is to, sanction a prosecution under sections 14 aud 24 as he did in the present case. In such a prosecution it is not necessary to prove *mens rea* for the reason which I have set out but if the Court were satisfied on the evidence that the owner or importer had acted innocently that would be a factor to be taken into account when considering the question of sentence.

In this case the Magistrate found that it was inconceivable that the appellant's chop was not privy to the attempt at smuggling and I am unable to say that there was no evidence upon which he could properly come to that conclusion. I do not think that the evidence goes so far as to establish that the appellant himself must have had knowledge of the smuggling and I apprehend that the learned Magistrate used the word Chop advisedly when he found that the Chop must have been privy to the attempt, and meant that the whole of the circumstances pointed irresistibly to connivance and knowledge on the part of

someone in the firm, either a principal or a subordinate. Even if it were necessary for the prosecution to prove guilty knowledge the cases establish that such knowledge on the part of a subordinate would be sufficient to make the principal liable in a charge of this description. As the Magistrate took that view, I think that a fine of $500/- was not excessive but inasmuch as this has been in the nature of a test case under the section and the appellant has incurred considerable expense I feel justified in reducing the fine to $250. The appeal will be dismissed, but the sentence varied accordingly. The order confiscating the rubber will stand.

Appeal dismissed.
Sentence varied.

Solicitors for the appellant—*Chan & Eber.*

[ORIGINAL CIVIL JURISDICTION]
Mundell, Ag.J.
September 24, 1936.
[APPELLATE CIVIL JURISDICTION]
McElwaine, C.J.
Whitley & Clark, JJ.
December 15, 1936

S. RENGASAMY PILLAY & ANOR..... (Plaintiffs-Appellants)

vs.

SADHU PAKIRSWAMY.....(Defendant-Respondent)

[SINGAPORE SUIT No. 528 of 1933]
[SINGAPORE APPEAL No. 6 of 1936]

Practice—parties—ejectment proceedings—joinder of executors as plaintiffs.

In a suit to recover possession of a testator's property all proving executors must be joined as plaintiffs.

APPEAL against an order of Mundell, Ag. J., dated September 24, 1936. The appeal was heard before McElwaine, C.J., Whitley and Clark, JJ. on the 15th day of December, 1936. The facts and arguments sufficiently appear from the judgment of the Court of Appeal.

Withers Payne for Plaintiffs-Appellants.

Johannes (*Davies* with him) for the Defendant-Respondent.

MUNDELL, J.—In this case the Plaintiffs—the two Executors of the Will of one M. Sidambram Pillay, who died on the 2nd April 1925, seek to recover from the Defendant possession of part of a piece of land near Silat Road Singapore, which on the 26th November 1912, had, with other land, been conveyed by one Lim Peng Siang to M. Sidambram Pillay—they also claim mesne profits of the land from the 31st May, 1931 until possession is delivered to them.

The Plaintiffs, as I understand their Statement of Claim, base their claim on 3 grounds—

First—That in February, 1931 the Defendant became tenant to the 1st Plaintiff of the land in dispute, and that his tenancy was determined on the 31st May 1931, by notice to quit given in April, 1931.

Secondly—That up to the time of his death in April, 1925 M. Sidambram Pillay was in possession of the land in dispute and that the Defendant was subsequently found in possession, and

Thirdly—That M. Sidambram Pillay had a good title to the land, and that the defendant has not acquired a title thereto by adverse possession.

The first and second grounds appeared in the Statement of Claim filed on the 13th February, 1936—the third ground was added by amendment of the Statement of Claim at the trial, but no application was then, or at any subsequent time, made to amend the Statement of Claim in respect of the relief which the Plaintiffs have asked for.

In answer, the Defendant has pleaded his possession of the land in dispute and has alleged that such possession has been in uninterrupted posssession for upwards of 19 years, or alternatively for 14 years; the Defendant also relies on Ordinance No. 56 (Limitation).

[His Lordship, after dealing with the submissions of Counsel and the evidence established in this case which were not in question in the appeal, proceeded as follows:—]

As the writ in this suit was filed on the 27th June 1935, it would appear *prima facie.* that the suit was brought within time, but Mr. Johannes has argued that whatever be the period at which the occupation of the Defendant is found to have commenced, time must, for the purposes of limitation, be reckoned up to the 17th July 1936. when the second Plaintiff was added as a Plaintiff in this suit. He contended that if there is more than one executor, all the Executors who are of full age must join in bringing an action such as the present, and he found his argument on English Common Law, on Section 21 of Ordinance 56 (Limitation), and on the decision in *Seerangathuni* v. *B. V. Mudaliar*, reported in 1921, 40 Madras L. J. p. 532, and in A.I.R. 1921, Madras, at p. 528. That case was a case for recovery of possession of land, and adverse possession was set up as a defence. The suit was commenced by one of two executors before the period of limitation had expired, and the other executor was joined, as a defendant in the proceedings, *after* the period of limitation had expired; it was held that the whole suit was barred.

I am aware that the Courts of this Colony have not always followed Indian decisions, but it is desirable that the Courts of the Empire should dispense justice on the same principles, and as Section 21 of our Limitation Ordinance is, in my view, *in pari materi* with section 22 of the Indian Limitation Act, and as the decision referred to is a decision of the Court of Appeal in Madras, I feel that I am bound to follow it, unless in the present case, circumstances exist which differentiate it from the case now under consideration.